

ASSEMBLY BILL

No. 1887

Introduced by Assembly Member Campos

February 19, 2014

An act to amend Section 851.8 of the Penal Code, relating to prostitution.

LEGISLATIVE COUNSEL'S DIGEST

AB 1887, as introduced, Campos. Prostitution: human trafficking: sealing and destruction of arrest records.

Existing law authorizes a person who has been arrested but is not convicted to petition the court for a finding that the defendant is factually innocent of the charges. If the petitioner is found factually innocent, existing law requires the court to order the records of the arrest to be sealed and destroyed, as specified.

This bill would authorize a person to petition a court to set aside a conviction for an offense relating to solicitation or prostitution, as specified, based on a finding that the person is factually innocent of the charge if the person is a victim of human trafficking and the offense is a result of the petitioner's status as a victim of that crime. In that case, the bill would require the court to order the records of the arrest to be sealed and destroyed, and to take other action appropriate under the circumstances or as justice requires.

The bill would also provide that a finding that the petitioner is factually innocent pursuant to this provision shall be admissible as evidence in a civil action brought by the petitioner, or his or her estate or representative, against an individual or entity for damages arising from the individual's or entity's alleged involvement in human trafficking.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 851.8 of the Penal Code is amended to
2 read:
3 851.8. (a) In any case where a person has been arrested and
4 no accusatory pleading has been filed, the person arrested may
5 petition the law enforcement agency having jurisdiction over the
6 offense to destroy its records of the arrest. A copy of the petition
7 shall be served upon the prosecuting attorney of the county or city
8 having jurisdiction over the offense. The law enforcement agency
9 having jurisdiction over the offense, upon a determination that the
10 person arrested is factually innocent, shall, with the concurrence
11 of the prosecuting attorney, seal its arrest records, and the petition
12 for relief under this section for three years from the date of the
13 arrest and thereafter destroy its arrest records and the petition. The
14 law enforcement agency having jurisdiction over the offense shall
15 notify the Department of Justice, and any law enforcement agency
16 that arrested the petitioner or participated in the arrest of the
17 petitioner for an offense for which the petitioner has been found
18 factually innocent under this subdivision, of the sealing of the
19 arrest records and the reason therefor. The Department of Justice
20 and any law enforcement agency so notified shall forthwith seal
21 their records of the arrest and the notice of sealing for three years
22 from the date of the arrest, and thereafter destroy their records of
23 the arrest and the notice of sealing. The law enforcement agency
24 having jurisdiction over the offense and the Department of Justice
25 shall request the destruction of any records of the arrest which they
26 have given to any local, state, or federal agency or to any other
27 person or entity. Each agency, person, or entity within the State
28 of California receiving the request shall destroy its records of the
29 arrest and the request, unless otherwise provided in this section.
30 (b) If, after receipt by both the law enforcement agency and the
31 prosecuting attorney of a petition for relief under subdivision (a),
32 the law enforcement agency and prosecuting attorney do not
33 respond to the petition by accepting or denying the petition within
34 60 days after the running of the relevant statute of limitations or
35 within 60 days after receipt of the petition in cases where the statute

1 of limitations has previously lapsed, then the petition shall be
2 deemed to be denied. In any case where the petition of an arrestee
3 to the law enforcement agency to have an arrest record destroyed
4 is denied, petition may be made to the superior court that would
5 have had territorial jurisdiction over the matter. A copy of the
6 petition shall be served on the law enforcement agency and the
7 prosecuting attorney of the county or city having jurisdiction over
8 the offense at least 10 days prior to the hearing thereon. The
9 prosecuting attorney and the law enforcement agency through the
10 district attorney may present evidence to the court at the hearing.
11 Notwithstanding Section 1538.5 or 1539, any judicial determination
12 of factual innocence made pursuant to this section may be heard
13 and determined upon declarations, affidavits, police reports, or
14 any other evidence submitted by the parties which is material,
15 relevant, and reliable. ~~A~~ *Except as provided for in paragraph (2)*
16 *of subdivision (g), a finding of factual innocence and an order for*
17 *the sealing and destruction of records pursuant to this section shall*
18 *not be made unless the court finds that no reasonable cause exists*
19 *to believe that the arrestee committed the offense for which the*
20 *arrest was made. In any court hearing to determine the factual*
21 *innocence of a party, the initial burden of proof shall rest with the*
22 *petitioner to show that no reasonable cause exists to believe that*
23 *the arrestee committed the offense for which the arrest was made.*
24 *If the court finds that this showing of no reasonable cause has been*
25 *made by the petitioner, then the burden of proof shall shift to the*
26 *respondent to show that a reasonable cause exists to believe that*
27 *the petitioner committed the offense for which the arrest was made.*
28 *If the court finds the arrestee to be factually innocent of the charges*
29 *for which the arrest was made, then the court shall order the law*
30 *enforcement agency having jurisdiction over the offense, the*
31 *Department of Justice, and any law enforcement agency which*
32 *arrested the petitioner or participated in the arrest of the petitioner*
33 *for an offense for which the petitioner has been found factually*
34 *innocent under this section to seal their records of the arrest and*
35 *the court order to seal and destroy the records, for three years from*
36 *the date of the arrest and thereafter to destroy their records of the*
37 *arrest and the court order to seal and destroy those records. The*
38 *court shall also order the law enforcement agency having*
39 *jurisdiction over the offense and the Department of Justice to*
40 *request the destruction of any records of the arrest which they have*

1 given to any local, state, or federal agency, person or entity. Each
2 state or local agency, person or entity within the State of California
3 receiving such a request shall destroy its records of the arrest and
4 the request to destroy the records, unless otherwise provided in
5 this section. The court shall give to the petitioner a copy of any
6 court order concerning the destruction of the arrest records.

7 (c) In any case where a person has been arrested, and an
8 accusatory pleading has been filed, but where no conviction has
9 occurred, the defendant may, at any time after dismissal of the
10 action, petition the court that dismissed the action for a finding
11 that the defendant is factually innocent of the charges for which
12 the arrest was made. A copy of the petition shall be served on the
13 prosecuting attorney of the county or city in which the accusatory
14 pleading was filed at least 10 days prior to the hearing on the
15 petitioner's factual innocence. The prosecuting attorney may
16 present evidence to the court at the hearing. The hearing shall be
17 conducted as provided in subdivision (b). If the court finds the
18 petitioner to be factually innocent of the charges for which the
19 arrest was made, then the court shall grant the relief as provided
20 in subdivision (b).

21 (d) In any case where a person has been arrested and an
22 accusatory pleading has been filed, but where no conviction has
23 occurred, the court may, with the concurrence of the prosecuting
24 attorney, grant the relief provided in subdivision (b) at the time of
25 the dismissal of the accusatory pleading.

26 (e) Whenever any person is acquitted of a charge and it appears
27 to the judge presiding at the trial at which the acquittal occurred
28 that the defendant was factually innocent of the charge, the judge
29 may grant the relief provided in subdivision (b).

30 (f) *In any case in which a person has been convicted of a charge*
31 *under subdivision (a), (b), or (d) of Section 647 or subdivision (a)*
32 *of Section 653.22, and the person's participation in the offense*
33 *was a result of having been a victim of human trafficking under*
34 *Section 236.1 or trafficking in persons under the federal Trafficking*
35 *Victims Protection Act (22 U.S.C. Sec. 7101 et seq.), the person*
36 *may petition the court to set aside the conviction based on a finding*
37 *that the person is factually innocent of the charge. A copy of the*
38 *petition shall be served on the prosecuting attorney of the county*
39 *or city in which the accusatory pleading was filed at least 10 days*
40 *prior to the hearing on the petitioner's factual innocence. The*

1 prosecuting attorney may present evidence to the court at the
2 hearing. The hearing shall be conducted as provided in subdivision
3 (b). If the court finds the petitioner to be factually innocent of the
4 charges of which he or she was convicted, the court shall set aside
5 the conviction and grant the relief as provided in subdivision (b),
6 and may take any other additional action it deems appropriate
7 under the circumstances or as justice requires.

8 (g) For purposes of determining whether a person is factually
9 innocent pursuant to subdivisions (a) to (f), inclusive, in any case
10 in which a person has been arrested for, charged with, or convicted
11 of a violation of subdivision (a), (b), or (d) of Section 647, or
12 subdivision (a) of Section 653.22, and the person's participation
13 in the offense was a result of having been a victim of human
14 trafficking under Section 236.1 or trafficking in persons under the
15 federal Trafficking Victims Protection Act (22 U.S.C. Sec. 7101
16 et seq.), the person shall be deemed factually innocent of the
17 charge.

18 (1) Official documentation of the petitioner's status as a victim
19 of human trafficking at the time of the offense from a federal, state,
20 or local government agency or documentation that another person
21 has been convicted pursuant to Section 236.1 in relation to the
22 petitioner's violation of subdivision (a), (b), or (d) of Section 647,
23 or of subdivision (a) of Section 653.22, creates a presumption that
24 the petitioner's participation in the offense was the result of having
25 been a victim of human trafficking or trafficking in persons, but
26 is not required for relief under this section.

27 (2) For purposes of this subdivision, the relief provided for in
28 subdivision (a), (b), or (f) may be granted notwithstanding the fact
29 that there may have been reasonable cause to believe the petitioner
30 committed the offense at the time of his or her conviction.

31 ~~(f)~~

32 (h) In any case where a person who has been arrested is granted
33 relief pursuant to subdivision ~~(a)~~ (a), (b), or ~~(b)~~ (f), the law
34 enforcement agency having jurisdiction over the offense or court
35 shall issue a written declaration to the arrestee stating that it is the
36 determination of the law enforcement agency having jurisdiction
37 over the offense or court that the arrestee is factually innocent of
38 the charges for which the person was arrested and that the arrestee
39 is thereby exonerated. Thereafter, the arrest shall be deemed not

1 to have occurred and the person may answer accordingly any
2 question relating to its occurrence.

3 ~~(g)~~

4 (i) The Department of Justice shall furnish forms to be utilized
5 by persons applying for the destruction of their arrest records and
6 for the written declaration that one person was found factually
7 innocent under subdivisions ~~(a) and (b)~~: (a), (b), or (f).

8 ~~(h)~~

9 (j) Documentation of arrest records destroyed pursuant to
10 subdivision (a), (b), (c), (d), (e), or ~~(e)~~ (f), that are contained in
11 investigative police reports shall bear the notation “Exonerated”
12 whenever reference is made to the arrestee. The arrestee shall be
13 notified in writing by the law enforcement agency having
14 jurisdiction over the offense of the sealing and destruction of the
15 arrest records pursuant to this section.

16 ~~(i)~~

17 (k) (1) Any finding that an arrestee is factually innocent
18 pursuant to subdivision (a), (b), (c), (d), (e), or ~~(e)~~ (f) shall not be
19 admissible as evidence in any action.

20 (2) Notwithstanding paragraph (1), a finding that ~~an arrestee a~~
21 *petitioner* is factually innocent pursuant to subdivisions (a) to ~~(e)~~;
22 (f), inclusive, shall be admissible as evidence at a hearing before
23 the California Victim Compensation and Government Claims
24 Board.

25 (3) *Notwithstanding paragraph (1), a finding that a petitioner*
26 *is factually innocent based on the fact that the petitioner’s*
27 *participation in the offense was a result of having been a victim*
28 *of human trafficking shall be admissible as evidence in a civil*
29 *action brought by the petitioner, or his or her estate or*
30 *representative, against an individual or entity for damages arising*
31 *from the individual’s or entity’s alleged involvement in human*
32 *trafficking.*

33 ~~(j)~~

34 (l) Destruction of records of arrest pursuant to subdivision (a),
35 (b), (c), (d), (e), or ~~(e)~~ (f) shall be accomplished by permanent
36 obliteration of all entries or notations upon the records pertaining
37 to the arrest, and the record shall be prepared again so that it
38 appears that the arrest never occurred. However, where (1) the
39 only entries on the record pertain to the arrest and (2) the record
40 can be destroyed without necessarily affecting the destruction of

other records, then the document constituting the record shall be physically destroyed.

~~(k)~~

(m) No records shall be destroyed pursuant to subdivision (a), (b), (c), (d), (e), or ~~(e)~~ (f) if the arrestee or a codefendant has filed a civil action against the peace officers or law enforcement jurisdiction which made the arrest or instituted the prosecution and if the agency which is the custodian of the records has received a certified copy of the complaint in the civil action, until the civil action has been resolved. Any records sealed pursuant to this section by the court in the civil actions, upon a showing of good cause, may be opened and submitted into evidence. The records shall be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties, and any other person authorized by the court. Immediately following the final resolution of the civil action, records subject to subdivision (a), (b), (c), (d), (e), or ~~(e)~~ (f) shall be sealed and destroyed pursuant to subdivision (a), (b), (c), (d), (e), or ~~(e)~~ (f).

~~(h)~~

(n) For arrests occurring on or after January 1, 1981, and for accusatory pleadings filed on or after January 1, 1981, petitions for relief under this section may be filed up to two years from the date of the arrest or filing of the accusatory pleading, whichever is later. Until January 1, 1983, petitioners can file for relief under this section for arrests which occurred or accusatory pleadings which were filed up to five years prior to the effective date of the statute. ~~Any time restrictions on filing for relief under this section may be waived upon a showing of good cause by the petitioner and in the absence of prejudice.~~

(1) Any time restrictions on filing for relief under this section may be waived upon a showing of good cause by the petitioner and in the absence of prejudice.

(2) For petitions brought pursuant to this section by persons determined to have been victims of human trafficking under Section 236.1 or trafficking in persons under the federal Trafficking Victims Protection Act (22 U.S.C. Sec. 7101 et seq.), the waiver of time restriction upon showing of good cause shall be interpreted broadly in favor of granting the petitioner relief. When evaluating whether good cause exists, the court shall take into consideration relevant factors, including, but not limited to, when the petitioner ceased

1 *to be a victim of human trafficking or trafficking in persons,*
2 *reasonable concern for the safety of the petitioner and the*
3 *petitioner's family, the age and capacity of the petitioner, the*
4 *petitioner's ability to obtain legal services, and other obstacles*
5 *that may have prevented the petitioner from filing the petition*
6 *within the time period.*

7 ~~(m)~~

8 (o) Any relief which is available to a petitioner under this section
9 for an arrest shall also be available for an arrest which has been
10 deemed to be or described as a detention under Section 849.5 or
11 851.6.

12 ~~(n)~~

13 (p) This section shall not apply to any offense which is classified
14 as an infraction.

15 ~~(o)~~

16 (q) (1) This section shall be repealed on the effective date of a
17 final judgment based on a claim under the California or United
18 States Constitution holding that evidence that is relevant, reliable,
19 and material may not be considered for purposes of a judicial
20 determination of factual innocence under this section. For purposes
21 of this subdivision, a judgment by the appellate division of a
22 superior court is a final judgment if it is published and if it is not
23 reviewed on appeal by a court of appeal. A judgment of a court of
24 appeal is a final judgment if it is published and if it is not reviewed
25 by the California Supreme Court.

26 (2) Any decision referred to in this subdivision shall be stayed
27 pending appeal.

28 (3) If not otherwise appealed by a party to the action, any
29 decision referred to in this subdivision which is a judgment by the
30 appellate division of the superior court shall be appealed by the
31 Attorney General.

32 ~~(p)~~

33 (r) A judgment of the court under subdivision (b), (c), (d), (e),
34 or ~~(e)~~ (f), is subject to the following appeal path:

35 (1) In a felony case, appeal is to the court of appeal.

36 (2) In a misdemeanor case, or in a case in which no accusatory
37 pleading was filed, appeal is to the appellate division of the superior
38 court.

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